



C.R.P(MD)No.500 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No.500 of 2024
and C.M.P(MD)No.2509 of 2024

- 1.M.Subramaniyan
- 2.R.Narayanasamy
- 3.S.Amutha
- 4.R.Nixon
- 5.C.Dhandapani
- 6.D.Baskar
- 7.P.George Martin
- 8.Vasantha

...Petitioners

Vs.

- 1.R.Raja
- 2.The Tahsildar,
Officer of the Tahsildar,
Manachanallur,
Trichy District.



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3.The Special Officer,
Koothur Panchayat,
Manachanallur Taluk,
Trichy District.

4.S.Latha

....Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.11.2023 made in I.A.No.1 of 2022 in O.S.No.211 of 2017 on the file of the District Munsif Court, Lalgudi.

For Petitioner : Mr. S.I.Muthiah

For Respondents : Mr. A.Sivanu Pandian
Government Advocate (Civil)

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.11.2023 made in I.A.No.1 of 2022 in O.S.No.211 of 2017 on the file of the District Munsif Court, Lalgudi.



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2. The suit in O.S.No.211 of 2017 was filed by the first respondent namely Raja against this petitioners and others seeking the relief of permanent injunction and for costs. The defendant appeared and filed a written statement and pending the further process, a petition was taken out by the present petitioners to scrap the Commissioner report filed in the matter and seeking to appoint some other Commissioner to measure the property. That came to be dismissed by the trial Court against which this revision petition is preferred.

3. As mentioned above, the first respondent namely Raja filed a suit for permanent injunction against these petitioners and others. In the petition it has been stated that the Commissioner originally appointed, did not measure the property with the help of a Surveyor. He measured the property on the basis of the Natham patta and Sketch but did not refer to the document. He also failed to make a



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mention about the encroachment made in the property. That was resisted by the respondents stating that in I.A.No.385 of 2017, Commissioner was appointed. He filed his report but no objection was made by the petitioners till date. That petition was dismissed by the trial Court stating that, the earlier Commissioner report was closed on 06.12.2021, since no objection was filed on either side. After the closure, the present petition was filed after lapse of five months.

4. Apart from that it is also stated that the suit property is a common pathway and therefore, not to be decided only on the basis of the documents and oral evidence. In the grounds, it has been simply stated that in the pathway, the plaintiff has made the encroachment. The Commissioner ought to have identified the property and measured the same with reference to the gift deed dated 21.08.2000 and sale deed dated 28.08.2000.

5. Since the Commissioner has measured the property on the



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basis of the FMB, the entire report is not faulty. A belated attempt is made by these petitioners to stall the further proceedings in the suit. The suit is filed in the year 2017. A simple suit for permanent injunction is not disposed of even after lapse of seven years. The only point to be decided in the suit is whether the plaintiff is entitled for permanent injunction. It is contention on the part of the revision petitioners that the plaintiff has encroached upon the common pathway. Whether there was any encroachment in the common pathway or not, as stated by the trial Court can be found out only during the course of trial on the basis of the oral and documentary evidence. It appears that absolutely no contention was raised by these petitioners at the time of appointment of the Commissioner that the Commissioner must measure the property with reference to the documents. After having waited for more than five months, he filed the present petition.

6. So, I find absolutely no reason to entertain this revision petition. But however, it is always within the power of the trial



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Court to take further course of action, if any clarification is required over the commissioner report, at the relevant point of time. I find absolutely no reason to reissue the Commissioner warrant, at this stage.

7. Accordingly, this Civil Revision Petition stands dismissed by confirming the order dated 30.11.2023 made in I.A.No.1 of 2022 in O.S.No.211 of 2017 on the file of the District Munsif Court, Lalgudi. No costs. Consequently, connected miscellaneous petition stands dismissed.

23.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The District Munsif Judge, Lalgudi.
- 2.Record Keeper, Vernacular Records,

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Madurai Bench of Madras High Court, Madurai.

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G. ILANGO VAN, J.

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